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In the Supreme Court of the United States

OCTOBER TERM, 1929

THE FIRST NATIONAL BANK OF CHICAGO, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

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THE FIRST NATIONAL BANK OF CHICAGO, PETITIONER

v.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the petition.

The petitioner during 1922 was affiliated with two Joint Stock Land Banks organized under the Federal Farm Loan Act. (R. 13.) In computing its income in its consolidated tax return for 1922, it deducted the interest paid by the Joint Stock Land Banks on their outstanding bonds. (R. 13.) As contemplated by the Federal Farm Loan Act the banks issued and sold their bonds to secure funds with which they made loans to farmers, the loans being represented by notes secured by approved farm mortgages, the mortgage notes in turn being used as collateral security for additional issues of bonds. The Commissioner disallowed the deduction and assessed an additional tax for the recovery of which this suit was brought. (R. 14.) The Court of Claims dismissed the petition.

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STATUTES INVOLVED

Section 213 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 237, provides in part:

> SEC. 213. That for the purposes of this title * * * the term "gross income"—
>
> * * * * * *
>
> (b) Does not include the following items, which shall be exempt from taxation under this title;
>
> * * * * * *
>
> (4) Interest upon * * * (b) securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916.

Section 234 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 254, provides in part:

> SEC. 234. (a) That in computing the net income of a corporation subject to the tax imposed by Section 230 there shall be allowed as deductions:
>
> * * * * * *
>
> (2) All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities * * * the interest upon which is wholly exempt from taxation under this title;
>
> * * * * * *

The Federal Farm Loan Act of July 17, 1916, is in chapter 245, 39 Stat. 360. (U. S. C., Title 12, Sec. 641.)

DISCUSSION

The Court of Claims held that the interest paid by the Joint Stock Land Banks to their bondholders

was, under the terms of Sec. 234 (a) (2) of the Revenue Act of 1921, upon "indebtedness incurred * * * to purchase or carry obligations or securities, the interest on which is wholly exempt from taxation under this title," and consequently was not deductible from petitioner's income.

The petitioner contends that the purpose of the interest exception clause, above set forth, was to discourage the borrowing of money by taxpayers for the purpose of purchasing a particular class of tax-exempt securities, and that it was not intended to apply to the operations of Joint Stock Land Banks created under the Farm Loan Act. Specifically the petitioner contends that the indebtedness evidenced by the Joint Stock Land Bank bonds was not incurred for the purpose of purchasing or carrying the farmers' mortgage notes within the meaning of Section 234 (a) (2).

Petitioner further contends that the farmers' mortgage notes are not "obligations or securities, the interest upon which is wholly exempt from taxation under this title" because they are not securities within the phrase "securities issued under the provisions of the Federal Farm Loan Act" of Section 213 (b) (4) (b). It is the contention of the petitioner that the last quoted phrase refers only to the bonds issued by the Joint Stock Land Banks and does not extend to the farmers' mortgage notes acquired by the banks with the proceeds from the sale of the bonds.

There are no decisions in conflict or accord with the opinion below. The questions raised are of general importance and have not yet been decided by this Court. The applicable provisions of the revenue Act of 1921 have been continued unchanged in the later Acts, so that the problems presented by this case are constantly arising under all the more recent Revenue Acts, and there are many unsettled claims presenting the question involved in this case. Several of these claims are pending in other Federal courts.

Although we contend that the decision below was correct, we submit that the question should be determined by this Court.

Respectfully submitted.

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